HENG KAI KOK v. ATTORNEY-GENERAL, SINGAPORE

[O.C.J. (Chan Sek Keong J.C.) August 28, 1986]
[Singapore – Suit No. 584 of 1983]

Administrative Law – Dismissal from Police Force – Whether dismissal wrongful – Exculpatory statements – Effect of – Functions of Inquiry Committee and PSC – Mutually exclusive – Police Force Act (Cap. 78) – Public Service (Disciplinary Proceedings) Regulations, 1970, regs. 4 & 7. – Constitution of the Republic of Singapore (Reprint) – Constitution of Malaysia – Constitution (Amendment) Act, 1970, art. 78(1).

Police Force – Dismissal from – Whether wrongful – Police Force Act (Cap. 78) – Public Service (Disciplinary Proceedings) Regulations, 1970, regs. 4 & 7.

Constitutional Law – Constitution of the Rupublic of Singapore (Reprint) – Authentic text.

The plaintiff joined the Singapore Police Force as a recruit police constable on March 1, 1958. He was confirmed as a Sergeant in January 1979. The terms and conditions of his service were governed by the Police Force Act (Cap. 78), the Police Regulations, the Police General Orders and various letters of appointment, promotion and confirmation sent by the relevant authorities and accepted by the plaintiff from time to time. On October 14, 1980, the plaintiff was handed a letter dated October 8, 1980 from the Acting Permanent Secretary (Home Affairs) in which he was informed that the Commissioner of Police acting under section 28(A) of the Police Force Act (the Act) had referred to the Public Service Commission (PSC) a case where disciplinary proceedings were to be taken against the plaintiff and that the same were thereby commenced against him under regulation 4 of the Public Service (Disciplinary Proceedings) Regulations 1970 (the 1970 Regulations) on 4 charges. The said letter also requested the plaintiff to state in writing any representations which he wanted to make to exculpate himself from the charges. On October 21, 1980 the plaintiff wrote to the Permanent Secretary (Home Affairs) stating the grounds on which the plaintiff was entitled to be exculpated.

On October 22, 1980, the plaintiff was interdicted from duty by the PSC and on September 13, 1982 he was dismissed from the Police Force by the PSC. The plaintiff brought this action against the defendant claiming that his dismissal from the Singapore Police Force on September 13, 1982 was null and void or alternatively that his dismissal was wrongful. The plaintiff contended, *inter alia*, that the PSC acted in breach of rule 4(3) and rule 7(i) of the 1970 Regulations by interdicting the plaintiff from duty without considering the exculpatory statement of the plaintiff.

Held, dismissing the plaintiff's claim: (1) the respective functions of the Inquiry Committee and the PSC are mutually exclusive. The Inquiry Committee are not a delegated body of the PSC for the purpose of making any decision; they are not a judicial or quasi-judicial body and they have no power to make any decision in any inquiry. No decision can emanate from the Inquiry Committee;

(2) the PSC may have to act judicially or quasi-judicially by the very nature of the power they exercise and the decisions they make which can affect the livelihood of public officers, but they are not obliged to give reasons for their decisions;

(3) the PSC in interdicting the plaintiff from duty acted in accordance with rule 7 of the 1970 Regulations. Rule 7(i) does not require the PSC to consider the exculpatory statement of the plaintiff before interdicting him. It empowers the PSC to interdict any officer in the public interest instantly and this must mean without having to hear him. The power of the PSC under rule 7 is not dependent on or related to their power under rule 4.

Cases referred to:

(1) *Jacob* v. *Attorney-General* [1970] 2 M.L.J. 133.
(2) *Wong Kim Sang* v. *Attorney-General* [1982] 1 M.L.J. 176.
(3) *Leong Kum Fatt* v. *Attorney-General* [1984] 2 M.L.J. 197.
(4) *Aziz bin Abdul Rahman* v. *Attorney-General* [1979] 2 M.L.J. 93.
(5) *Reference by the Registrar of Titles Selangor* [1936] F.M.S.L.R. 147; [1937] M.L.J. 9.

CIVIL SUIT.

G. Raman for the plaintiff.

Jocelyn Ong (Miss) for the defendant.

Cur. Adv. Vult.

Chan Sek Keong J.C.: In this action, the plaintiff claims certain declarations that his dismissal from the Singapore Police Force on September 13, 1982 was null and void and, in consequence, he remained and was entitled to be remunerated in full as a Detective Police Sergeant with effect from the date of his interdiction on October 27, 1980. Alternatively, he claims damages for wrongful dismissal.

The plaintiff joined the Singapore Police Force as a Recruit Police Constable on March 1, 1958. He was confirmed as Sergeant in January 1979. The terms and conditions of his service were governed by the Police Force Act (Cap. 78), the Police Regulations, the Police General Orders and various letters of appointment, promotion and confirmation sent by the relevant authorities and accepted by the plaintiff from time to time.

On October 14, 1980, the plaintiff was handed a letter dated October 8, 1980 from the Acting Permanent Secretary (Home Affairs) in which he was informed that the Commissioner of Police acting under section 28(A) of the Police Force Act ("the Act") had referred to the Public Service Commission ("PSC") a case where disciplinary proceedings were to be taken against the plaintiff and that the same were thereby commenced against him under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations 1970 ("the 1970 Regulations") on the following

charges:

"(a) That you, on or about July 2, 1977 whilst attached to Toa Payoh Police Station, Republic of Singapore, did solicit sexual favours from one Madam CHEONG YOKE PENG, the mother of one LIM SIEW CHYE, a person then detained under the Criminal Law (Temporary Provisions) Act, as an inducement for securing the release of the said LIM SIEW CHYE from such lawful detention, and when she refused, you accepted her counter-proposal that she would recommend a friend of hers to you for you to have sexual relations with and you have thereby acted in disgrace of your position as a member of the Singapore Police Force and in a manner rendering you unfit to continue as a member of the said Force.

(b) That you, on or about July 2, 1977 whilst attached to the Toa Payoh Police Station, Republic of Singapore, did have sexual relations with one Madam NG BEE HUA @ AH KEOW, part-time prostitute pursuant to an arrangement with one Madam CHEONG YOKE PENG, the mother of one LIM SIEW CHYE, a person detained under the Criminal Law (Temporary Provisions) Act, and you thereby acted in disgrace of your position as a member of the Singapore Police Force and in a manner rendering you unfit to continue as a member of the said Force.

(c) That you, on or about July 2, 1977 whilst attached to the Toa Payoh Station, Republic of Singapore, did telephone one Madam CHEONG YOKE PENG, the mother of one LIM SIEW CHYE, a person then detained under the Criminal Law (Temporary Provisions) Act, and solicited from her a gratification to wit, a sum of $2,000.00 as an inducement, *inter alia*, for the performance of an official act viz., the release of her son from lawful detention and you have thereby contravened para. L122(1) of the Instruction Manual No. 2 which is made applicable to you by the Police General Orders.

(d) That you, on or about July 2, 1977 whilst attached to Toa Payoh Police Station, Republic of Singapore, did telephone one Madam CHEONG YOKE PENG, the mother of one LIM SIEW CHYE, a person then detained under the Criminal Law (Temporary Provisions) Act, and carried on an obscene conversation with the said Madam CHEONG YOKE PENG and you have thereby acted in disgrace of your position as a member of the Singapore Police Force and in a manner rendering you unfit to continue as a member of the said Force."

The said letter of October 8, 1982 also requested the plaintiff to state in writing on or before the expiry of 7 working days from the date of receipt thereof any representations which he might wish to make to exculpate himself from the charges referred to.

The said letter also informed him that upon conclusion of the disciplinary proceedings and in accordance with the merits of the case, the PSC were authorised by section 28(A)(2) of the Act to impose upon him any of the punishments prescribed in section 27 or section 28 of the Act whichever was appropriate, or to dismiss or retire him from the Police Force.

On October, 22 1980, the plaintiff, through his solicitor, wrote to the Permanent Secretary (Home Affairs) stating the grounds of which the plaintiff was entitled to be exculpated.

By a letter dated October 22, 1980 from the Ministry of Home Affairs, which letter was received by the plaintiff on October 27, 1980, the plaintiff was informed that the PSC had decided to interdict him from duty with effect from the date following the receipt of the said letter until further notice on half pay for one month in the first instance with effect from the date of interdiction or until the case against him was completed, whichever was earlier. Subsequently, the allowance of half pay to the plaintiff was extended from month to month until the plaintiff was dismissed.

By a letter dated January 15, 1981 from the Ministry of Home Affairs and received by the plaintiff on January 23, 1981, the plaintiff was informed that the PSC had appointed a Committee of Inquiry ("the Committee") to inquire into the charges against the plaintiff. The Committee held their inquiry for 9 days commencing on October 5, 1981 and, allowing for adjournments, completed their hearing on November 4, 1981.

In accordance with Regulation 4(13) of the 1970 Regulations, the Committee submitted on August 24, 1982 their report together with the record of the proceedings to the PSC for their consideration. The evidence of Lim Kit Hee (DW1), the Assistant Director of the Disciplinary section of the PSC was that the PSC made their decision on the report of the Committee on August 26, 1986 and on September 13, 1982 a letter was sent by the Acting Permanent Secretary of the Ministry of Home Affairs to the plaintiff informing him that the PSC, after careful consideration of the full facts of his case, had decided to dismiss him from service with effect from the date following the receipt of the letter.

On October 7, 1982, the plaintiff wrote to the PSC appealing against their decision of dismissal and requested the imposition of a lesser punishment. The PSC rejected the appeal on October 14, 1982.

On November 3, 1982, the solicitor for the plaintiff wrote to the PSC for a copy of the notes

of evidence but was rebuffed. Undaunted, the solicitor wrote again on November 17, 1982 and referred to the case of *Jacob* v. *Attorney General*[1], where the PSC released similar documents to the appellant in that case. Again, the PSC refused the request.

On April 14, 1983, the plaintiff commenced these proceedings. In his Statement of Claim the plaintiff alleged that: (a) the PSC acted in breach of Rule 4(3) and Rule 7(i) of the 1970 Regulations by interdicting the plaintiff from duty without considering the exculpatory statement of the plaintiff; (b) that the PSC acted in breach of the 1970 Regulations for having commenced disciplinary proceedings against the plaintiff without considering his exculpatory statement, that this showed that the PSC had pre-conceived notions of the plaintiff's guilt which counsel submitted in argument, amounted to *mala fides* on the part of the PSC; (c) the dismissal was null and void because the PSC violated the rules of natural justice in that although the plaintiff was given an opportunity to be heard at the inquiry, the evidence that was heard by the Inquiry Committee taken as a whole was not reasonably capable of supporting a finding of guilt on the part of the plaintiff for the following reasons:

(a) There was no evidence or there was insufficient evidence to warrant the conviction of the Plaintiff on the said charges;

(b) There was undue reliance and weight attached to a transcript of a tape recorded conversation recorded by the complainant allegedly between the complainant one Madam Cheong Yoke Peng (PW 1) and the Plaintiff although the voice alleged to be that of the Plaintiff;

(c) There were numerous material inconsistencies and contradiction in the evidence of the main prosecution witnesses especially that of the Complainant Madam Cheong Yoke Peng (PW 1) and Ng Bee Hua (PW 2) which negatived guilt on the part of the Plaintiff;

(d) There was undue reliance on the uncorroborated evidence of the complainant who, it was clear from the evidence, was not an impartial or truthful witness;

(e) The Prosecution admitted that there were many unsatisfactory aspects of the case in particular to the length of time between the incident complained of and the date of hearing, the personalities of the Ministry's witnesses and an unsatisfactory course of investigations.

(f) The failure by the Ministry to call a material witness, CPIB Special Investigator Jeffry Seah, to account for the actual number of tapes seized and how a tape which was material for the case was missing, should have created grave doubts as to the Ministry's case.

Unbeknown to the plaintiff and his solicitor at the time, the Committee had already made their report to the PSC in which they found that there was insufficient evidence to substantiate any of the four charges against the plaintiff.

On the 1st charge, the Committee said that because (1) the plaintiff and the complainant (PW1) had been acquainted for only a short period, the plaintiff could not have made any suggestions for sexual intimacy and (2) PW1 and her husband were aware that the plaintiff was not in a position to release their son and he was therefore not in a position to strike any bargain with them. On the 2nd charge, the Committee held that since PW5 (Ah Keow) could not identify the plaintiff during the inquiry (even though there was evidence to show that she did identify him earlier on January 22, 1979 at the office of the Corrupt Practice Investigation Bureau), the said charge could not stand. On the 3rd charge, the Committee were of the view that there was no evidence at all to support this charge and that PW1's accusation was a mere embellishment. On the 4th charge, the Committee were not satisfied with the identification of the plaintiff's voice on the tape recordings as PW8 who was positive that the voice was that of the plaintiff could not explain how he was so positive, and PW3 who was the plaintiff's immediate superior was not absolutely sure that the voice was that of the plaintiff and, in the circumstances, the plaintiff ought to be given the benefit of the doubt.

Sometime in April 1986, after this action was fixed for trial, the PSC relented on their stand and furnished to the plaintiff's solicitor a copy each of the report of the Committee and the Records of Proceedings. Copies of these documents were admitted in and form part of the evidence in these proceedings.

The plaintiff gave evidence and reasserted his innocence in respect of the four charges. The defendant called as a witness DW1 and he testified that the PSC had found the plaintiff guilty on charges 1, 2 and 4 but not on charge 3. During cross-examination, he described the preliminary steps his section had to take before transmitting the papers to the PSC for decision. These steps involved reading the record of the proceedings and the report of the Committee, summarising the evidence of both sides, the submissions of counsel for both parties and then transmitting these summaries together with the record of the proceedings and the report of the Committee (which he called "the Submission") to the PSC for their

consideration and decision. DW1 also said that the Submission which was prepared by his subordinate and carefully checked for errors by him did not contain any recommendation of any kind since neither he nor his subordinate officer had the power nor were they asked to make any recommendation whatever and that the PSC would make their decision only after considering the Submission together with the record of the proceedings and the report of the Committee. Counsel for the plaintiff then made an application to me to call for the production of the summaries, which I refused on the ground that there was no evidence to show that the PSC had relied exclusively or substantially on the said summaries in making their decision.

The present case is practically on all fours with *Wong Kim Sang* v. *Attorney General*[2] with the exception that here the plaintiff was also interdicted from duty pending the completion of disciplinary proceedings against him. The arguments of counsel for the plaintiff before me were also a repetition of the arguments made to and rejected by Kulasekaram J. in *Wong Kim Sang*. He submitted that Kulasekaram J. was wrong and that I should not follow him insofar as he decided:

(a) the PSC had no power to differ from the findings of the Committee, (because, as contended by counsel, the Committee were the delegates of the PSC);

(b) the High Court in its supervisory jurisdiction over domestic or inferior tribunals like the PSC was not entitled to interfere with their decisions on the ground of insufficiency of evidence;

(c) Article 135(2) ("Article 135(2)") of the Constitution of Malaysia, which formed part of Constitution of the Republic of Singapore by virtue of the Republic of Singapore Independence Act 1965, was impliedly repealed by and upon the coming into force on June 3, 1970 by Article 78(3) of the Constitution (Amendment) Act 1970 ("the 1970 Amendment") (because, as contended by counsel, Article 135(2) had granted rights on all subordinate police officers and such vested rights should not be held to have been repealed by implication).

As to the first point, the scheme of disciplinary proceedings under the 1970 Regulations envisages (a) the preferment of a charge against a public officer; (b) the submission of an exculpatory statement by the person charged; (c) the consideration by the PSC of the exculpatory statement; (d) the appointment of an Inquiry Committee of 3 members to inquire into the charge and to submit a report to the PSC; (e) the consideration by the PSC of the report including the record of the proceedings and the making of their decision. The respective functions of the Committee and the PSC are mutually exclusive. The Committee are not a delegated body of the PSC for the purpose of making any decision; they are not a judicial or quasi-judicial body and they have no power to make any decision in an inquiry. No decision can emanate from the Committee. As Kulasekaram J. said in *Wong Kim Sang*, any decisions purportedly made by the Committee are nothing more than expressions of opinions. The PSC may have to act judicially or quasi-judicially by the very nature of the power they exercise and the decisions they make which can affect the livelihood of public officers (including subordinate police officers in the appropriate cases), but they are not obliged to give reasons for their decisions.

The second submission runs contrary to a long line of decisions that the High Court in the exercise of its supervisory jurisdiction over inferior tribunals will not interfere with their findings on grounds of insufficiency of evidence:– see *Jacob* v. *Attorney General*[1], *Wong Kim Sang* v. *Attorney General*[2], and *Leong Kum Fatt* v. *Attorney General*[3]. Whether or not and in what circumstances the Court may interfere on the ground that there is no evidence at all (see *Aziz* v. *Attorney General*[4], affirmed by the Court of Appeal on another ground) is an issue which was not seriously or adequately canvassed before me by counsel for the plaintiff, notwithstanding that the plaintiff had pleaded, *inter alia*, that there was no evidence to warrant the conviction of the plaintiff on the charges. I am not disposed to deal with this point for an additional reason. Upon a perusal of the report of the Committee and the record of proceedings, I am unable to say that there was no evidence at all on which the PSC were entitled to decide that the plaintiff was guilty of 3 of the 4 charges made against him, as clearly there was, even though this Court, if it had to decide on the evidence, might not necessarily have reached the same conclusions on the charges.

The third submission on the plaintiff's rights under Article 135(2) is not relevant since the plaintiff has admitted in his pleadings that he had the opportunity of being and was heard at the

inquiry. However, as it had been raised, I will state my views on it. Whether or not Kulasekaram J. in *Wong Kim Sang*[2] was correct in deciding that Article 78(3) of the 1970 Amendment which, for the purposes of that case, provided that:

"No police officer of the rank of Inspector and above shall be dismissed in rank or reduced in rank without being given a reasonable opportunity of being heard"

had the effect of impliedly repealing Article 135(2) which, for the purposes of the same case, read:

"No member of the police force shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

is no longer an issue. The reason is that the Reprint of the Constitution of the Republic of Singapore ("the Reprint") came into force on March 31, 1980 pursuant to Article 93 (now Article 155 of the Reprint) of the Constitution of Singapore as amended by the Constitution (Amendment) Act 1979. Article 135(2) has been omitted in the Reprint. By virtue of Article 155 thereof, the Reprint shall be deemed to be and shall be, without any question whatsoever in all courts of justice and for all purposes whatsoever, the authentic text of the Constitution of the Republic of Singapore in force as from March 31, 1980 until superseded by the next or subsequent authorised reprint (see *Reference by the Registrar of Titles Selangor*[5] for the interpretation of an analogous provision in a law revision statute).

The other issues raised by the plaintiff can be disposed of shortly. First, the PSC in interdicting the plaintiff from duty acted in accordance with Rule 7 of the 1970 Regulations. Rule 7(i) does not require the PSC to consider the exculpatory statement of the plaintiff before interdicting him. Rule 7(i) has a different function. It empowers the PSC to interdict any officer in the public interest instantly and this must mean without having to hear him The power of the PSC under Rule 7 is not dependent on or related to their power under Rule 4. Secondly, it is also clear that counsel for the plaintiff had mistakenly thought that the letter of interdiction dated October 22, 1980 from the Ministry of Home Affairs to the plaintiff was a letter given under Rule 4 when in fact it was given under Rule 7 of the 1970 Regulations. There is therefore no substance either in the allegation (which plaintiff's counsel rightly conceded after recognising his mistake) that the PSC had failed to consider the plaintiff's exculpatory statement before deciding to appoint the Committee to hear the plaintiff, or in the submission that the PSC had thereby acted *mala fide* (assuming but without deciding that a mere failure to consider the exculpatory statement was evidence of *mala fides*).

Accordingly, the plaintiff's claim is dismissed with costs.

Order accordingly.

Solicitors: *G. Raman & Partners.*

ANDREW LOH & ANOR. v. MANAGEMENT CORPORATION STRATA TITLE NO. 082

[O.C.J. (Chua J.) September 5, 1986]

[Singapore – Originating Summons No. 439 of 1986]

Strata Title – Maintenance charges against owners – Refusal to pay – Sale of apartment to plaintiffs – Who is liable to pay – Whether plaintiffs "subsidiary proprietors" – Land Titles (Strata) Act, ss. 34(1), (3), (4), (5) & (7) & 35(1).

The plaintiffs, owners of an apartment in the block of apartments at No. 27 Balmoral Park, sought certain orders against the defendants, who were charged with the duty of managing the said block of apartments.

On August 29, 1983, at the Annual General Meeting of the defendants, it was resolved to collect $3,000.00 from each member for the costs of repairs and repainting the building, and "that the time and amount to be called up from members each time to meet progressive payments will be left to the incoming Council members, who will instruct the Management Agents at their discretion. It was, however, resolved to collect $1,500.00 from each member in September 1983."

In August 1983 the said apartment was owned by Winifred Chen. The said apartment was later sold to Mr. & Mrs. Ho on January 31, 1984. On February 16, 1984, the defendants wrote to Mr. & Mrs. Ho's solicitors stating that Madam Chen still owed the defendants the sum of $2,472.00. The solicitors for Mr. & Mrs. Ho replied that they had arranged for Madam Chen's solicitors to retain the sum of $2,472.00 to meet her outstanding dues to the defendants. However, the defendants were informed that the Mr. & Mrs. Ho were not responsible for the insurance for the year ended December 31, 1984, nor for the repair and repainting of $1,500.00 and that these were payable by Madam Chen.

The plaintiffs purchased the said apartment from Mr. & Mrs. Ho and became the registered proprietors on June